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JUN 11 2014

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
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9 In re ) Case No. 07-90770-E-7  
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Debtor.

GARY FARRAR, Chapter 7  
Trustee,

Adv. Proc. No. 08-9107

Plaintiff,

v.

WARDA & YONANO, a Limited  
Liability Partnership; et  
al.,

Defendants.

21 SUPPLEMENTAL FINDING AFTER REMAND  
22 AMOUNT OF FRAUDULENT CONVEYANCE

23 On December 9, 2008, Gary Farrar ("Plaintiff-Trustee"), in his  
24 capacity as the Chapter 7 Trustee for the bankruptcy estate of  
25 Bella Vista by Paramount, LLC ("Bella Vista") commenced this  
26 Adversary Proceeding against Warda & Yonano, LLP ("W&Y"),  
27 J.C. Williams Company ("JCW"), JCW-Cypress Home Group, LP ("JCW-  
28 Cypress"), and John C. Williams ("Williams"). The Complaint sought  
to recover \$100,000.00 as either a fraudulent conveyance (federal

1 and California law) or as an avoidable preference. On May 17,  
2 2010, after a court trial, this bankruptcy court entered judgment  
3 for Gary Farrar, the Chapter 7 Trustee, in this Adversary  
4 Proceeding and against the law firm Warda & Yonano in the amount of  
5 \$100,000.00.<sup>1</sup> The court also entered judgment for all of the other  
6 Defendants, and against the Plaintiff-Trustee, denying any other  
7 relief.

8 The bankruptcy court determined that the \$100,000.00 payment  
9 received by W&Y in December 2006 constituted a preference paid to  
10 an insider under 11 U.S.C. 547 and a fraudulent conveyance pursuant  
11 to 11 U.S.C. § 548. The bankruptcy court's Findings of Fact and  
12 Conclusions of Law were stated orally on the record.<sup>2</sup>

13 The judgment was appealed to the Bankruptcy Appellate Panel,  
14 which reversed the court's determination that W&Y was an insider,  
15 and thereon reversed the judgment for Plaintiff-Trustee that the  
16 \$100,000.00 constituted an avoidable preference pursuant to  
17 11 U.S.C. § 547. The Bankruptcy Appellate Panel also reversed the  
18 court's determination that the payments constituted a fraudulent  
19 conveyance, stating that the bankruptcy court had not made a  
20 determination as to the amount of the fraudulent conveyance. The  
21 Panel also reversed the bankruptcy court's determination that W&Y  
22 was an "initial transferee" as defined by 11 U.S.C. § 550. *Warda*  
23 *& Yonano, LLP v. Farrar*, BAP No. EC-10-1191, 2011 Bankr. LEXIS 1493  
24 (B.A.P. 9th Cir. 2011).

25 The Plaintiff-Trustee appealed the Bankruptcy Appellate Panel  
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27 <sup>1</sup> Dckt. 39.

28 <sup>2</sup> Transcript of Trial, Pgs 165-181, Dckt. 44 ("TT").

1 decision to the Ninth Circuit Court of Appeals. The Ninth Circuit  
2 affirmed the Bankruptcy Appellate Panel on the issue of W&Y not  
3 being insiders (affirming the denial of relief pursuant to  
4 11 U.S.C. § 547), but reversed the Bankruptcy Appellate Panel on  
5 the issue of whether the bankruptcy court made a determination that  
6 the payments constituted a fraudulent conveyance and that W&Y was  
7 not an initial transferee of a fraudulent conveyance. *Farrar v.*  
8 *Warda & Yonano, LLP*, 549 Fed. Appx. 648, 2013 U.S. App. LEXIS 24629  
9 (9th Cir. 2013). The Ninth Circuit Court of Appeals issued a  
10 Mandate that the case be remanded to the bankruptcy court to make  
11 further findings as to the amount of the fraudulent conveyance.  
12 The Bankruptcy Appellate Panel ordered the matter remanded to the  
13 bankruptcy court for the additional findings.

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15 **ADDITIONAL FINDINGS OF FACT AS TO AMOUNT  
OF THE FRAUDULENT CONVEYANCE**

16 The bankruptcy court made a determination in this Adversary  
17 Proceeding that the fraudulent conveyance arose under 11 U.S.C.  
18 § 548 and not under California Civil Code §§ 3439.04 and 349.05.  
19 TT pg. 1806-15. The court determined that there was a fraudulent  
20 conveyance pursuant to § 548(a)(1)(B)(i) and (ii)(I).<sup>3</sup>

21 The only witness testifying was Michael Warda ("Warda"), a  
22 partner of W&Y and the attorney representing Bella Vista prior to  
23 and in the Chapter 7 bankruptcy case filed on July 30, 2007.<sup>4</sup>  
24 Warda testified that in December 2006, a check in the amount of  
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27 <sup>3</sup> TT 169:5 - 171:25, 172:10-17, 175:3-18, 178:4-23.

28 <sup>4</sup> Bankr. E.D. Cal. 07-90770.

1 \$100,000.00 made payable to Bella Vista was delivered to W&Y.<sup>5</sup> The  
2 check was deposited by W&Y by, or at the direction of, Warda into  
3 the W&Y client trust account.<sup>6</sup>

4 By correspondence dated June 12, 2008, Warda stated that the  
5 \$100,000.00 was deposited in the W&Y client trust account on  
6 December 21, 2006, and then released to W&Y to pay fees owed by  
7 Bella Vista to W&Y, as wells as fees owed by the related entities  
8 JCW and JCW-Cypress.<sup>7</sup> When deposited, the monies owed W&Y for  
9 legal services provided to Bella Vista was less than \$100,000.00.<sup>8</sup>  
10 Attached to Exhibit 2 are copies of W&Y invoices for the Bella  
11 Vista account and the other related entity accounts. The amounts  
12 owed to W&Y by Bella Vista as of December 31, 2006 (the month the  
13 \$100,000.00 was received at W&Y) as computed from the Exhibit 2  
14 Invoices total \$18,963.01.

15 In his letter of June 12, 2008, Warda states that of the  
16 \$100,000.00, approximately \$23,182.17 was used directly to pay the  
17 invoices for attorneys' fees owed by Bella Vista to W&Y. No  
18 attempt was made at trial to clearly compute the amount stated on  
19 the invoices or more specifically compute the approximate amount  
20 that was the subject of Warda's testimony. Exhibit 3, admitted  
21 over the Defendants' objection, was presented as invoices for  
22 additional work for the JCW and JCW-Cypress related entities, done  
23 possibly for Bella Vista. The testimony at trial was that Warda  
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25 <sup>5</sup> TT 22:20-25, 21:1-7.

26 <sup>6</sup> TT 23:8-12, 24:15-19.

27 <sup>7</sup> Exhibit 2.

28 <sup>8</sup> TT 32:12-25, Warda's testimony confirming that the information  
in Exhibit 2 is accurate.

1 could not identify what portion of the balance shown on these  
2 invoices was for Bella Vista and what was for the related entities.  
3 All of the descriptions for the services provided are redacted from  
4 Exhibit 3, with just dates, billed amounts, and balance due totals  
5 shown on the invoices. Additionally, most of the billing for the  
6 unidentified work listed on the Exhibit 3 Invoices is during the  
7 period after the July 30, 2007 bankruptcy filing by Bella Vista.

8 After paying the approximate \$23,182.17 owed by Bella Vista to  
9 W&Y, the balance of the \$100,000.00 was disbursed to W&Y to pay the  
10 JCW and JCW-Cypress related entities' outstanding invoices for  
11 legal services provided by W&Y.<sup>9</sup> Warda further testified that when  
12 he deposited the check made payable to Bella Vista into the W&Y  
13 trust account, Warda identified it on the W&Y books as monies  
14 deposited for JCW-Cypress.<sup>10</sup> Warda was not instructed by a  
15 representative of Bella Vista to identify the deposit as being for  
16 JCW-Cypress, and Warda made that decision concerning the Bella  
17 Vista check on his own authority.<sup>11</sup>

18 The Chapter 7 bankruptcy case for Bella Vista was filed on  
19 July 30, 2007. Invoice 12671 identifies additional post-  
20 December 31, 2006 work done by W&Y for Bella Vista (Preston  
21 Pipelines) through July 31, 2007.<sup>12</sup> The fees for this additional  
22 work total \$12,485.16. For the Bella Vista (Ross Carroll) Invoice  
23 12670 fees for additional work done during the period after  
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25 <sup>9</sup> Warda testimony at trial, TT 33:1-5; 39:1-11.

26 <sup>10</sup> TT 33:6-13.

27 <sup>11</sup> TT 33:2-14.

28 <sup>12</sup> Exhibit 2.

1 December 31, 2006, through the July 30, 2007 Chapter 7 bankruptcy  
2 filing by Bella Vista total \$3,937.50.<sup>13</sup>

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4 **Determination of Fraudulent Conveyance Amount  
Received by Warda & Yonano**

5 Of the \$100,000.00 received by Bella Vista, only \$23,182.17  
6 paid the obligation owed by the Debtor to W&Y. Though the court's  
7 computation of the invoice balances total only \$18,963.01 and  
8 reference was made at trial to the invoice amount not equaling  
9 Warda's recollection of the approximate amount, the court gives W&Y  
10 the benefit of the doubt because Plaintiff, Defendant, and Warda  
11 repeatedly used the \$23,182.17 amount in stating their respective  
12 cases at trial. Based on Warda's testimony and other evidence  
13 presented, the remaining \$76,817.83 of Bella Vista's monies were  
14 disbursed to W&Y to pay attorneys' fees bills of separate, related  
15 entities.

16 After receiving the \$100,000.00 payment from Bella Vista and  
17 applying it to outstanding bills for Bella Vista and the JCW and  
18 JCW-Cypress related entities, W&Y continued to do additional work  
19 for Bella Vista. The Invoices presented as Exhibit 2 reflect that  
20 an additional \$16,422.66 in work was billed by W&Y to the Bella  
21 Vista accounts. The testimony provided by Warda is that he,  
22 without instruction from Bella Vista or the related entities,  
23 determined how the \$100,000.00 should be deposited in the trust  
24 account and how it should be allocated to Bella Vista and the

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<sup>13</sup> Id.

1 related entities.<sup>14</sup> No clear accounting of the application of the  
2 monies was provided at trial.

3 It is not beyond rational expectation that Warda and W&Y,  
4 having received \$100,000.00 that they applied to various accounts,  
5 would then continue to do additional work for Bella Vista -  
6 treating a portion of the monies used to pay off the related  
7 entities' unpaid invoices as if they had held it to pay the new  
8 work being done over the next seven months before filing bankruptcy  
9 for Bella Vista. Since Warda had the authority to deposit,  
10 identify, and then disburse the Bella Vista monies as he determined  
11 (without instruction or direction from another representative of  
12 Bella Vista or the related entities), he could just as well have  
13 set aside a portion to pay the upcoming bills. Though he did not  
14 do so clearly or document such, the court again gives W&Y the  
15 benefit of the doubt that they continued to do additional Bella  
16 Vista work, to the extent shown on the Invoices presented as  
17 Exhibit 2, in reliance on having received the \$100,000.00 to first  
18 pay Bella Vista's bills to W&Y.

19 The court determines that of the \$100,000.00 received by W&Y  
20 from the \$100,000.00 check made payable to Bella Vista, \$39,604.83  
21 was for legal services provided by W&Y to Bella Vista, and  
22 \$60,395.17 was for services provided not to Bella Vista, but  
23 related, non-bankruptcy debtor entities. In being paid \$60,395.17  
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25 <sup>14</sup> Though not clearly articulated by this court when making its  
26 original findings of fact and conclusions of law, Warda's authority to  
27 receive, deposit to a client who was not the payee on the check, and  
28 then allocate the \$100,000.00 to the outstanding bills of Bella Vista  
and the related entities weighed heavy in the determination that W&Y  
were insiders for purposes of 11 U.S.C. § 547. That determination now  
works in favor of W&Y concerning how they did, or could have,  
controlled the monies of Bella Vista.

1 for W&Y legal services provided to JCW and JCW-Cypress, W&Y  
2 received a fraudulent conveyance from Bella Vista.

3 Based on the evidence presented at trial, this bankruptcy  
4 court finds that W&Y received the fraudulent conveyance in the  
5 amount of \$60,395.17. These Supplemental Findings are in addition  
6 to, and do not replace, alter, or change the prior Findings of Fact  
7 and Conclusions of law made by this court after trial.

8 **Entry of Corrected Judgment**

9 To provide for an accurate judgment after remand, the  
10 bankruptcy court shall issue a "Corrected Judgment After Remand"  
11 setting forth the fraudulent conveyance amount of \$69,395.17.

12 Dated: June 11, 2014

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16 RONALD H. SARGIS, Judge  
17 United States Bankruptcy Court  
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## **Instructions to Clerk of Court**

**Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked \_\_\_\_\_, via the U.S. mail.

**Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee** (if appointed in the case),  
**and** XX Other Persons Specified Below:

Office of the U.S. Trustee  
Robert T. Matsui United States Courthouse  
501 I Street, Room 7-500  
Sacramento, CA 95814

Clifford W. Stevens  
P.O. Box 20  
Stockton, CA 95201-3020